

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0248, State of New Hampshire v. Charles Behr, the court on March 8, 2005, issued the following order:

Following a hearing, the trial court found that the defendant, Charles Behr, had violated his probation by associating with a person having a criminal record and by consuming alcohol. On appeal, the defendant contests the sufficiency of the evidence concerning his consumption of alcohol. We affirm.

To prevail, the defendant must show that the evidence, viewed in the light most favorable to the State, fails to support the trial court's decision. State v. Gibson, 146 N.H. 462, 464 (2001).

The State presented the testimony of Detective Sambatoro, who testified that he had: (1) observed the defendant buying a six-pack of beer and taking it back to his motel room; (2) observed another six-pack in the defendant's motel room that the defendant identified as his and that was missing four beers; and (3) detected an odor of stale alcohol coming from the defendant. Based upon the record, we conclude that the evidence supports the trial court's finding that the defendant violated his probation by failing to refrain totally from the use of alcoholic beverages.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,
Clerk**